

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

AMY M.

Petitioner,

vs.

SAN ANDREAS REGIONAL CENTER,

Respondent.

OAH No. N 2006110290

(Early Intervention Services Act
Gov. Code, § 95000 et seq.)

DECISION

Administrative Law Judge Cheryl Tompkin, State of California, Office of Administrative Hearings, heard this matter on November 28, 2006, in Campbell, California.

Petitioner Amy M. was represented by her mother Angelica S.

Jacques Maitre, Director's Designee for Fair Hearings, represented the service agency, San Andreas Regional Center (SARC).

The case was submitted for decision on November 28, 2006.

ISSUES

Whether SARC must provide bus transportation for petitioner to and from her infant program at the County Office of Education.

FACTUAL FINDINGS

1. Petitioner was born December 3, 2004, and is two-years-old. She was assessed and found eligible for regional center services under the Early Start Program (ESP).

2. An IFSP¹ was developed on March 28, 2006. Among other things, the IFSP specified that petitioner was to receive specialized instruction (a center based toddler group) twice a week for 180 minutes, physical therapy once a week for 30 minutes and speech therapy consultation once a week for 30 minutes. All of the services were to be provided at the Chandler Tripp School operated by the County Office of Education (COE). The projected start date for the services was November 28, 2006, continuing through March 28, 2007. SARC was responsible for funding the services.

3. On November 22, 2006, the IFSP team met to discuss the request by petitioner's parents for bus transportation to the Chandler Tripp School at COE. SARC offered, as it had at a previous IFSP meeting, to provide taxi cab transport for petitioner and her mother (parent caretaker) to the Chandler Tripp School, or reimbursement for mileage for parent transport to the school. Alternatively, SARC offered a different private infant program, the Aim program, which is vendorized by SARC. The Aim program provides both an infant based group and bus transportation to the program.

4. Although petitioner had not yet begun the program at the Chandler Tripp School, petitioner's parents declined to participate in the Aim program. They continued to request bus transportation to the Chandler Tripp School, but agreed to accept mileage reimbursement pending resolution of their request for bus transportation.

5. Petitioner's mother is aware that other children travel to school at COE on a bus provided by COE. Although she realizes that SARC and not COE is funding petitioner's infant program at COE, she feels that bus transport should be included as part of the program. She is requesting bus transport because she does not always wish to accompany petitioner to her program. Also, there are times when petitioner's mother does not have a car available to transport petitioner to her program. And when petitioner and her mother utilize taxi service, petitioner's mother must wait at the program so she can take petitioner home, which she does not always wish to do.

6. Howard Doi, District Manager of the Early Start Unit at SARC, testified that SARC's standard practice is to provide taxi service to infant programs for the consumer and a caregiver, or to reimburse for mileage for parents (or caregivers) who chose to transport their children to the infant programs. These options have been repeatedly offered to petitioner's parents and continue to be available. However, when petitioner's parents requested bus transport to the Chandler Tripp School, SARC contacted COE, which is not a SARC vendor, to see if it would be willing to become a SARC vendor and transport petitioner. COE refused to negotiate any deal with SARC to transport petitioner. No

¹ Under California's Early Start program, if a regional center determines that a child is eligible for early intervention services, the regional center must conduct a planning process that results in an individualized family service plan (IFSP). The IFSP must specify the early intervention services necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services. (Cal. Code Regs., tit. 17, §52109, subd. (b); see also 20 U.S.C. § 1436, subd. (d)(6).)

vendorized bus transport is available through SARC to transport petitioner to the program. No transport service is available through SARC where a parent or caregiver does not have to accompany the child to an infant program. In fact, SARC wants parents to be involved with the education of their child and believes it is best (although not required) if parents accompany their child to the child's infant program.

LEGAL CONCLUSIONS

1. Part C, subchapter III of the Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.) (IDEA) authorizes federal funding to assist states in maintaining and implementing a comprehensive statewide system to provide early intervention services for infants and toddlers with disabilities and their families. (20 U.S.C. § 1433.) Under this program each state is given the opportunity to receive federal funds to provide services for eligible children from zero to thirty-six months if certain requirements are met. California has chosen to participate and has passed the necessary legislation. California's program is known as "Early Start," and its statute, the California Early Intervention Services Act, is found at Government Code section 95000 et seq. Regulations have also been adopted and are found at title 17 California Code of Regulations sections 52000 through 52175.

2. The California Legislature has found that early intervention services represent an investment of resources, "in that these services reduce the ultimate costs to our society, by minimizing the need for special education and related services in later school years and by minimizing the likelihood of institutionalization." (Gov. Code, § 95005, subd. (a)(2).) The Legislature has also recognized that time is of the essence and that "[t]he earlier intervention is started, the greater the ultimate cost-effectiveness and the higher is the educational attainment and quality of life achieved by children with disabilities." (*Id.*) State regulations also stress the need to move quickly. Early intervention services specified in the IFSP are to "begin as soon as possible." (Cal. Code Regs., tit. 17, § 52109, subd. (b).) Regional centers are required to arrange, provide, or purchase such services "as soon as possible" and an infant or toddler is not to be placed on a waiting list for early intervention services required under the IFSP. (Cal. Code Regs., tit. 17, § 52106, subds. (c) & (d).) Regional centers are also the payor of last resort for infants and toddlers determined eligible for regional center services. (Cal. Code Regs., tit. 17, § 52109, subds. (a) & (b).)

3. Government Code section 95004, subdivision (a), provides "Direct services for eligible infants and toddlers and their families shall be provided pursuant to the existing regional center system under the Lanterman Developmental Disabilities Services Act . . . and the existing local education agency system . . ." Under the Lanterman Act a regional center is authorized to purchase services or supports for a consumer pursuant to "vendorization or contract." (Welf. & Inst. Code, § 4648, subd. (a)(3)(A).) A regional center may reimburse an individual or agency for services or supports provided to a consumer if the individual or agency has completed the vendorization process. (Welf. & Inst. Code, § 4648, subd. (a)(3)(B).) The rate of reimbursement is limited to "a cost not to exceed the maximum rate

of payment for that service or support established by the department.” (Welf. & Inst. Code, § 4648, subd. (a)(4).)

Under the Lanterman Act the Department of Developmental Services is responsible for establishing a process of setting rates for services purchased by regional centers. (Welf. & Inst. Code, § 4690.) Accordingly, when purchasing services under the Lanterman Act, regional centers are not permitted to exceed the rate set by the Department of Developmental Services. Pursuant to Government Code section 95004, subdivision (b)(1), Lanterman Act provisions relating to vendorization and ratesetting also apply to the provision of early intervention services, “except where compliance with those provisions would result in any delays in, or any cost to the families for, the provision of early intervention”²

4. In the subject case, petitioner’s parents have requested bus transport to and from petitioner’s infant program at the Chandler Tripp School at COE. COE is not a SARC vendor and has declined to become a SARC vendor. SARC must comply with Lanterman Act vendorization requirements when providing early start services unless doing so would result in a delay in providing services to petitioner or a cost to petitioner’s family. There is no evidence that compliance with the Lanterman Act vendorization requirements would result in a delay in, or any cost to petitioner’s family for, provision of early intervention services. SARC has previously offered and is still willing to provide transportation to and from petitioner’s infant program, either in the form of taxi service or through reimbursement of mileage costs. It has also offered an alternate infant program that would satisfy the requirements of petitioner’s IFSP and provide bus transport. Petitioner’s parents have declined to have her participate in this program, but it also remains an available option.

² Government Code section 95004, subdivision (b)(1) provides in pertinent part:

In providing services under this title, regional centers shall comply with the Lanterman Developmental Disabilities Service Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, and its implementing regulations (Division 2 (commencing with Section 50201) of Title 17 of the California Code of Regulations) including, but not limited to, those provisions relating to vendorization and ratesetting, except where compliance with those provisions would result in any delays in, or any cost to the families for, the provision of early intervention, or otherwise conflict with this title and the regulations implementing this title (Chapter 2 (commencing with Section 52000) of Division 2 of Title 17 of the California Code of Regulations), or Part C of the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1431) et seq., and applicable federal regulations contained in Part 303 (commencing with Section 303.1) of Title 34 of the Code of Federal Regulations.

ORDER

The petition of Amy M. for bus transportation to and from her infant program at the County Office of Education is denied.

DATED: December 11, 2006

CHERYL TOMPKIN
Administrative Law Judge
Office of Administrative Hearings